institute legal proceedings in behalf of the State through special counsel. If our governors have not such power they are mere dignitaries, without the means of performing their first duty—that of seeing that the laws are faithfully executed.

INTERFERENCE WITH THE COMFORTABLE ENJOYMENT OF PROPERTY AS A NUISANCE.—By the law of England one who is injured in the comfortable enjoyment of his property by a continuing nuisance for which damages may be recovered at law is entitled to an injunction in a court of equity as a matter of absolute right. *Crump* v. *Lambert* (1867) L. R. 3 Eq. 409, 412. But in determining the existence of such a nuisance the relative rights of the parties are examined, due regard being had to all the circumstances of time and place. *St. Helena Smelting Co.* v. *Tipping* (1865) 11 H. L. C. 642. This doctrine has perhaps its greatest extension in the immunity enjoyed by noisy trades when conducted in trade communities. The rights here enjoyed are natural rights, not measured by prescriptive user, but allowing a natural growth by the adoption of new inventions in machinery and method. Otherwise, useful trades would be as effectively destroyed by modern competition as by injunction in the first instance. These rights are not, however, unlimited. Even in a trade community an extraordinary use of property may constitute a nuisance, and when the nuisance is established an injunction may issue. The foregoing principles are recognized in a recent English case which illustrates the difficulty met with in attempting to apply them. The plaintiff lived in a district devoted to the printing trade. In the house adjoining the defendant established a printing machine of improved pattern less noisy than most machines. It was operated at night when necessary as were other machines in the neighborhood. The trial judge found that the night work of the defendant's machine caused serious disturbance to the plaintiff, and held it to be a legal nuisance entitling him to an injunction. The upper court, though questioning the existence of a nuisance under the facts, refused to set aside the injunction. *Rushmer* v. *Polsue & Alfieri* (1906) 1 Ch. 234.

From this decision is manifest the injustice that must result one way or the other in attempting to apply absolute remedies to relative rights. By the English rule a plaintiff must make out a case entitling him to the severe remedy of an injunction before he can get any relief against a continuing nuisance. Realizing the inequity of this when applied to a situation involving valuable, conflicting rights Parliament passed Lord Cairns' Act (21 & 22 Vict. c. 27) conferring upon the court of chancery jurisdiction which it had not before to award damages in lieu of an injunction. But with strange conservatism the courts have refused to exercise the discretionary power thus conferred, and have continued to administer equitable remedies according to settled principles. *Shelfer* v. *London Elec. Lighting Co.* (1895) 1 Ch. 287.

Similar strictness is employed in America in cases where property has been damaged or destroyed. But as regards interference

with comfortable enjoyment, although the English attitude is not without support in this country, *Hennessy* v. *Carmony* (1892) 50 N. J. Eq. 616, the great majority of American courts, weighing the balance of hardship and considerations of public interest, have deemed compensation in damages more equitable in view of the rights of all the parties than injunctive relief. *Gilbert* v. *Showerman* (1871) 23 Mich. 448; *Daniels* v. *Keokuk Water Works* (1883) 61 Iowa 549; *Riedeman* v. *Mt. Morris Elec. Light Co.* (N. Y. 1901) 56 App. Div. 23. The chief criticism of the American doctrine is that it tends to foster a system of judicial eminent domain. But the English rule seems to differ from it only in that the taking is without compensation. If this meets better the needs of an old and closely settled population, the exigencies of developing a new country demand that the individuals do not stand on absolute rights, and experience has not shown it to be unsafe to leave their adjustment to the courts.

ALIENATION OF ENTIRE PROPERTY BY A QUASI-PUBLIC CORPORATION.—Although the general power of a corporation to dispose of property, as a necessary incident of its right to take and hold, is well recognized in the law, *Barry* v. *Merchants' Exchange Co.* (N. Y. 1844) 1 Sandf. Ch. 280, where the question is one as to the alienation of its property entire, some confusion has been introduced by extraneous considerations, as the right of the corporation to abandon, *People* v. *Ballard* (1892) 134 N. Y. 269, or to dispose of its corporate franchise. *York etc. R. R. Co.* v. *Winans* (U. S. 1854) 17 How. 30. But where no such questions are involved the courts have not hesitated to uphold the right of alienation as co-extensive with the right to own. *Miners' Ditch Co.* v. *Zellerbach* (1869) 37 Cal. 543, 588; *State* v. *Western Irr. Canal Co.* (1888) 40 Kan. 96. Accordingly, it is well settled that a private corporation may sell its whole property in the absence of express limitations under its charter. *Holmes etc. Mfg. Co.* v. *Metal Co.* (1891) 127 N. Y. 252. In the case of quasi-public corporations a narrower doctrine has prevailed. The tendency of the courts to apply a strict interpretation to the charters of carriers, *Thomas* v. *Railroad Co.* (1879) 101 U. S. 71, 82, and others to whom special prerogatives are given, *Black* v. *Del. & H. Canal Co.* (1871) 22 N. J. Eq. 130, 399, extended to include public service corporations generally, *Central Transportation Co.* v. *Pullman Car Co.* (1890) 139 U. S. 24, has established the rule that the powers of such corporation will be restricted to prevent any alienation of property to such an extent as to incapacitate them from carrying out the purposes for which they were formed.

A recent decision in which this doctrine has been applied in connection with municipal ownership raises a question as to the principles upon which the rule is founded and the extent to which it should be carried. *Quinby* v. *Consumers' Gas Trust Co.* (1905) 140 Fed. 362. It was there held that the contract of a company, incorporated for the purpose of supplying gas to the city of Indian-